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67TH CONGRESS, 4th Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1633

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UINTA NATIONAL FOREST, UTAH.

FEBRUARY 17, 1923.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. COLTON, from the Committee on the Public Lands, submitted the following

REPORT.

[To accompany H. R. 10861.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 10861) to add certain lands to the Uinta National Forest, and for other purposes, having considered the same, report thereon with the recommendation that it pass. The bill is as follows:

[H. R. 10861, Sixty-seventh Congress, second session.]

A BILL To add certain lands to the Uinta National Forest, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there are hereby added to the Uinta National Forest, Utah, all those lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project, and said lands shall be administered by the Secretary of Agriculture under all laws, rules, and regulations applicable to national forests, except the act to provide for the entry of agricultural lands within forest reserves, approved June 11, 1906 (chapter 3074, Thirty-fourth Statutes, page 233).

SEC. 2. That 10 per centum of all receipts obtained from the Uinta National Forest, Utah, shall at the end of each fiscal year be paid by the Secretary of Agriculture into the reclamation fund authorized to be established by the act of June 17, 1902 (Thirty-second Statutes, page 388), until there shall be reimbursed to said reclamation fund the amount heretofore paid for the lands described in section 1 hereof which was paid from the reclamation fund for the benefit of the Uintah Indians under the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and the Strawberry Valley project shall be credited therewith.

SEC. 3. That the administration of these lands for the purposes described in section 1 hereof shall not prevent the Reclamation Service using any parts for the construction and maintenance of canals, dikes, dams, reservoirs, and other appurtenant irrigation works needed as parts of the Strawberry Valley project, including the right to take without cost all earth, stone, or other materials needed for such construction.

SEC. 4. That that part of the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and all other laws inconsistent with the purposes of this act are hereby repealed.

This bill was submitted both to the Secretary of the Interior and the Secretary of Agriculture requesting reports thereon. Their reports follow at close and are a part of this report.

It will be noted that the proposed legislation seeks to add approximately 50,000 acres of land to the Uinta National Forest, in the State of Utah, and provides that it shall be subject to all the laws, rules, and regulations relating to the national forest, except the homestead act, and also provides for certain payments to be made to the reclamation fund and for authority of the United States Reclamation Service to construct on the lands any canals, dikes, and reservoirs, or other irrigation works that may be needed in connection with the reclamation project.

This amounts to a transfer of the management and control of a part of an immense watershed, which supplies a reservoir constructed by and in charge of the United States, under the Secretary of the Interior, to a bureau under the Secretary of Agriculture, to be then managed under the same head as other lands of a very much larger area are cared for which surround them on three sides, thus at the same time continuing to and leaving this part of the watershed under the control of the United States, but under another department and its bureau and in no wise affecting the title to the lands involved.

These lands were formerly embraced in the Uinta Indian Reservation and were withdrawn at various times for reservoir purposes and for protection of the watershed supplying the reservoir afterwards constructed by the United States as a source of water supply for the Strawberry Valley Project.

In the year 1909 a question arose as to the liability of the Reclamation Service to pay the Indians rent for the use of these lands, followed by the introduction of a bill in the Senate of the United States which would have extinguished the right of the Indians to said lands on the payment to the Indians of the legal price of $1.25 per acre. In reporting upon this bill the committee having it in charge stated, among other things, as follows:

> The project includes the construction of a reservoir for the storage of water which when completed will submerge several thousand acres of land; the remainder of the land lies around and immediately adjoining that portion which will be submerged.

It therefore appeared to the committee that the physical features surrounding this land were not fully understood. As a matter of fact, part of the land lies from 5 to 10 miles away from the submerged portion. It is a splendid tract of grazing land, equal to any other in the State, such as are usually found at high altitudes in the Rocky Mountains and is covered not only with forage but parts of it are timbered, consisting of pine and other timber growing thereon.

The bill introduced at that time did not become a law, but when the Indian appropriation bill for the fiscal year ending June 30, 1911, reached the Senate, an amendment was placed on the appropriation bill which embodied not only the feature of the first bill referred to but went further and contained the following language:

> All right, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act.

It is contended by the opponents of the measure under consideration that this law, known as the act of April 4, 1910, passed title from the United States and vested it in the water users of the reclamation project. If their contention in that regard is sound, this act, upon which there were no hearings and on which no report was submitted by the Secretary of the Interior, or by any other department, in effect divested the United States of a tract of between fifty and sixty thousand acres of very high-grade grazing lands.

The act of 1910 (41 Stat. 163), in order to avoid taking the money out of the Public Treasury to pay the Indians for the extinguishment of their rights, provides a method through the rental system whereby the reclamation fund (out of which the money used was taken) was to be reimbursed, and it is unquestioned that prior to the year 1920 this expenditure, as a result of this method, had been fully reimbursed, whereupon Congress passed an act providing that all moneys received from leases of all lands used in connection with reservoirs "shall be covered into the reclamation fund."

By this act of 1920 Congress provided as follows:

> The proceeds heretofore or hereafter received from the lease of any lands reserved or withdrawn under the reclamation law or from the sale of the products therefrom shall be covered into the reclamation fund, and where such lands are affected by a reservation or withdrawal under some other law the proceeds from the lease of the land and the sale of products therefrom shall likewise be covered into the reclamation fund in all cases where such lands are needed for the protection or operation of any reservoir or other works constructed under the reclamation law, and such lands shall be and remain under the jurisdiction of the Secretary of the Interior.

This latter act makes no exceptions to the lands involved in this controversy but expressly provides that wherever any lands are needed for the protection or operation of any reservoir, or other works constructed under the reclamation laws, such lands shall be and remain under the jurisdiction of the Secretary of the Interior.

The hearings also disclose that the Secretary of the Interior recognizes that the lands are under his exclusive management and control, and it appears, as shown by the hearings, that the Secretary of the Interior has within the last two years granted a right of way for the construction of a railroad across these lands. It follows, therefore, that not only does the law rightly provide for the retention of these lands along with the reservoir, and as appurtenant thereto, for watershed purposes, in the Government of the United States until the Government shall otherwise provide for the management, but that the Secretary of the Interior recognized and still recognizes the jurisdiction of the United States over this watershed.

It is recognized as well-settled law that a tenant can not question the title of the landlord; this the tenant is estopped from doing. By reference to page 194 of the hearings it will be found that the opponents of this bill have introduced and placed of record a copy of the lease entered into November 26, 1920, by which the opponents to the bill, the Strawberry Highline Canal Co., temporarily leased this watershed from the United States. It is not reasonable to assume that if they believed they had title to this property they would have leased it, thereby procuring a lease to what they claimed to be their own property.

It follows, therefore, that not only does the law provide for the retention of these lands in the Government of the United States, but that the Secretary of the Interior, as well as the Strawberry Valley

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water users, recognized and still recognize the exclusive proprietorship of the United States over the lands.

It is submitted, however, that it can not reasonably be contended, that not only was a good water right given to the settlers for the price paid therefor, on a 20-year noninterest-bearing basis (which figured on a "present worth" basis is only about one-third the contract price), but also that this very valuable tract of land, an area of approximately equal to the area of the lands embraced within the entire project thus watered, was also intended to be granted to the water users under and by virtue of any contract entered into prior to or even subsequent to the passage of this act as disclosed at the hearings, because of the fact that several years after the passage of the 1910 act all of the contracts then in existence were, on the water users' request, surrendered and new contracts were entered into between the Government and settlers under the old and canceled contracts under which the reservoir and 3 miles of tunneling therefrom were constructed. These new contracts were entered into not under the act of 1902 but under what is known as the "Warren Act" authorizing the Government to sell water to water users independent of water rights previously contracted for under the reclamation act of 1902. The remaining water users embraced under what is known as the "High Line" part of the Strawberry project, who prior to 1913 had not entered into any contracts with the United States, and who thereafter entered into contracts with the United States under the act of 1902, made no reference in said contracts to the act of 1910, here involved.

Your committee is of the opinion that the act of 1910 must be construed in pari materia; that is, in connection with all other acts bearing upon this subject, further reference to which will follow. A careful reading of the measures convinces your committee that the act of 1910 was intended as supplemental to, and a part of the reclamation act of 1902, and should be construed in connection with, and as a part of said act, the closing paragraph of which reads:

> *Provided*: * * * That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

Special attention is due the language following the word "provided" in the reclamation act. It specifically limits the passing of "the management and operation" until after the payments are made "for the major portion of the lands irrigated," etc., to the "management and operation of such irrigation works." This, it will be observed, is followed with a second proviso, clearly stating that the "title to, and management and operation of the reservoirs and works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress." As will later appear, the words "necessary for their protection" necessarily includes the watersheds and all the lands and improvements incidental to the reservoir. Reading the act of 1910 in pari materia with the act of 1902, which, under the well-settled rules of statutory construction is clearly applicable hereto, the closing words of the act of 1910, in referring to the extinguishment of the Indian title thereunder, specially provides that the management and control thereof can pass to the owners of the lands irrigated only at such time as the management and operation of the irrigation works shall pass under the terms of the reclamation act. It should be kept in mind that under the reclamation act the reservoir and watershed incident thereto can not pass to the project until Congress shall so decide, if at all, and in that connection there should be read also the closing sentence of the act of 1920, quoted on page 31 of the hearings, which act after providing that the proceeds in all cases where the lands are needed for the protection or the operation of the reservoir, or, in other words, constructed under the reclamation law, shall "likewise be covered into the reclamation fund" with the further proviso that the lands from which such rental may be received "shall be and remain under the jurisdiction of the Secretary of the Interior."

Under the clear and expressed words of the quoted sentences above, the control and operation of these irrigation works, the reservoir and watersheds incidental thereto, are still left by Congress under the control of the Secretary of the Interior, from which it follows there can be no question as to the right of Congress to legislate with reference to this particular watershed, as it has done with others named above; that is to say, Congress has full power and authority (to say nothing of its clear justification) to place the control and management of the watershed under the management of a bureau in another department—the National Forest Service—or to make any other disposition with reference to the management thereof that Congress may deem proper. It is not contended that this 50,000 acres of range land, so far as the project is concerned, will ever be connected with the project in any other manner than that of furnishing a water supply for the reservoir, and it is clearly for Congress to decide now or at any time how this particular area of public land, to which the Indians' rights are expressly extinguished, may be managed and controlled.

But should the construction urged by some opponents of the bill, who admit that the title has not as yet vested and who contend that it was contemplated by the act of April 3, 1910, that all title and management shall pass to the water users whenever the irrigation works (under their interpretation of "works") shall pass under the reclamation law of 1902, the fact still remains (under this most favorable construction possible for the water users under existing laws) that the recipients thereof can in no wise be prejudiced in such rights as they may thus have, if any, by reason of the management and supervisorship being transferred from the Interior Department to the Agriculture Department, there to be managed under the direct charge and supervision of the National Forest Service, as is the rest of the extensive watershed appurtenant to the Strawberry Valley Reservoir, and as are the watersheds of substantially all other reservoirs constructed by the Government.

These lands when held by the Indians were under the control of the Government, and upon extinguishment of the Indians' rights continued and still remain under the same sovereign authority and must necessarily so continue until Congress decrees otherwise.

The observation made by Mr. Larsen at the hearings (p. 41) concerning the alleged effect that the bill under consideration might have upon rights claimed by the water users under the act of 1910 is much in point:

> What legal or moral right would require the Government to turn it over to some other people? But, as stated, such course is not necessary. But if necessary to right the wrong that was committed in event the act of 1910 means what our opposition

... as the act of 1910 would prove to be. ... a jar to the equitable conscience of our good

Nor will it do to say that the water users may be prejudiced by not receiving the rentals provided for in their sublease from the Strawberry Cattle Grazing Co., for the act of 1920 expressly provides that—

> the proceeds heretofore or hereafter received from the lease of any lands reserved or withdrawn under the reclamation law, and where such lands are affected by a reservation or withdrawal under some other law, the proceeds from the lease of the land shall likewise be covered into the reclamation fund in all cases where such lands are needed for the protection or operation of any reservoir or other works constructed under the reclamation law * * *.

That these lands come within the above excerpt taken from the closing part of the act of 1920 would seem not open to question, from which it follows that the water users are not entitled under any circumstances to any of the proceeds arising from their present or any lease of this watershed, for the reason that rentals received by the Reclamation Service and credited to their project prior to the passage of the act of 1920 were more than sufficient to reimburse the project for the moneys previously taken from the reclamation fund and charged to the project for the extinguishment of the Indians' rights to the lands included in this part of the Strawberry Reservoir watershed. Nor can it be maintained that because of any contract made with the department the above express provision of the statute is waived, for no principle of law is more firmly established than that the Government is not bound by unauthorized acts of its officials, from which it follows, as a matter of law, the water users merely hold such rentals as may be collected under their lease in trust for the general reclamation fund and must account therefor.

It is thus manifest that under any view taken, under existing laws, the water users can not and will not be prejudiced in whatever rights they may have, by the passage of the bill under consideration.

The Yakima and Jackson Lake Reservoir watersheds are all within national forests, while for the purpose of regulating stock grazing the Roosevelt (Salt River) Reservoir was annexed to a much larger body of national forest lands and placed, and still remains, under the control and management of the Agricultural Department through its National Forest Bureau. The part of the watershed here involved appears to be the only Government reservoir watershed not under the National Forest Service management for (with but one or two possible exceptions) the 26 or more of the reclamation reservoirs constructed by the United States, all of which derive their source of water supply, more or less, from watersheds situated within national forests and under the direct control of the National Forest Service, while the reservoirs proper remain under the direct charge and management of the Interior Department, and would so continue under the provisions of this bill.

Moreover, it clearly appears, in fact is not questioned, that these lands were acquired from the Indians solely for the purpose of controlling them for the benefits to accrue from the water supply therefrom to the reservoir. On page 119 of the hearings appears a copy of a lease given to the water users by the United States on November 26, 1920. Section 3 of this lease expressly admits that "the utilization of these lands for grazing purposes under proper restrictions

and conditions will not interfere with the uses for which said lands were acquired"—that is to say, the watershed for said reservoir. The same concession also appears in section 5 of the sublease on page 124 of the hearings. The act here under consideration can in no way interfere or in any respect impair its use as such watershed. And, as disclosed in the hearings, it can not be seriously questioned but that this watershed range can be handled more economically and more equitably by the National Forest Service than under any other present known agency. In that connection it is also disclosed that the exorbitant rental being charged, encourages, and, in fact, necessitates overgrazing in order to get the per head charge down to a point where stockmen can use the lands for pasturage for their stock, all of which would be avoided under the provisions of this bill, by placing the same under the control of the National Forest Service.

The committee held extended hearings from which it is learned that the tract of land here involved is used exclusively for grazing purposes, except such part as is actually used in connection with the reservoir project, which latter usage includes about 8,000 acres. This 50,000-acre stock range is bounded on three sides by an immense area under the control of the National Forest Service. Great difficulty is encountered in the administration of these two areas by reason of the fact that the two tracts are parts of the same watershed under separate governmental management, that is to say under separate departments whose policy and regulations affecting the use of these lands are widely different. It follows, therefore, that in order to prevent friction between the users of the two tracts there must be constructed many miles of drift fence to prevent the natural drifting of stock from that part of the watershed controlled by the National Forest Service down onto the lower part of the same watershed comprising 50,000 acres of range lands here involved. Aside from the difficulties arising from this dual management of these two tracts of similar lands, there is the far more important problem to all concerned as to how best to graze and handle the lands in order to insure their perpetual value as a watershed protection.

From the hearings it is learned that under the present plan there is little or no attention paid to the actual carrying capacity of the lands, but on the other hand the price paid for the use of them as yearly rental has been determined by competitive bidding until the figure has reached such proportions that it would seem to compel the lessees to graze the lands very heavily in order to recover the amounts expended as grazing rental for the lands. For instance, it was brought out at the hearings that the stockman who grazes stock on these lands here involved pays for the summer pasturage privilege the sum of from three to four dollars per animal for his cattle and 80 cents per head for his sheep, while upon the Forest Service ranges adjacent thereto on three sides, the fee for the same privilege ranges from 62 to 75 cents per head for his cattle and 10 cents per head for his sheep. The policy thus permitted and pursued under the present law is not only inconsistent with, but clearly tends to defeat the very purpose for which the act of 1910 was enacted, while on the other hand the inclusion of the lands within the national forest, as contemplated by this bill, will accomplish the desired purpose—the protection of the watershed for reservoir purposes.

It should also be borne in mind that this bill will correct some very inequitable features of the present arrangement relating to the use of the lands for grazing purposes. From the hearings it is clear that the use of these lands for grazing purposes has been exercised, in a large measure, by residents of Utah, in the immediate vicinity other than those residents under the Strawberry project, and that these uses have dated back for about 50 years, until such uses have become more or less interwoven with the economic life of the people dependent upon them for grazing purposes. The people directly concerned with the uses of these lands from a standpoint of their value to them, as a watershed and their value as a grazing unit, are separated by topography and other features which impels this committee to conclude that the passage of this bill will be of unquestioned benefit to all concerned.

The committee is not unconscious of the observations made to the effect that about 2,000 water users under the Strawberry project have petitioned Congress not to pass this bill. It is but natural that they should do so since they have been led to believe that by so doing they might, by preventing the passage of this bill, be able to add to their possessions not only a good water right to their project, but that this watershed with fine grazing lands, approximately an area equal to their watered lands, and probably the finest of its kind in the State, situated over and beyond another range of mountains, may be given to them as an additional bonus—an extraordinary gratuity—the like of which has not been granted, either in whole or in part to any other water users in the United States.

Attention is also directed to the fact that the report of the Secretary of the Interior does not, either expressly or in substance, state that the water users have title or will acquire title to these lands under the act of 1910. He merely refers to them as having acquired some rights entitling them to recognition, to the extent of such rights as they may have acquired, and neither states, nor purports to state, what these rights are. It is conceded they may have "some rights," but only in so far as the watershed may be connected with the reservoir as a source of water supply therefor. These rights are limited to their connection with the watershed of the reservoir, both of which are and must remain under the control of such departments of the Government as Congress may decide upon; and, so far as appears in any act of Congress, may forever remain under Government control and ownership, and will thus continue, whether the lands are under the management of the Forest Service or under the management of the Secretary of the Interior. Choice of departments is for Congress to determine, not for the water users to dictate.

It is not intended that the operation and management of the reservoir proper shall pass to the National Forest Service. It did not so pass in the case of other projects mentioned, deriving their source of water supply from watersheds under the control of the National Forest Service, and will not do so here. Again, when placed under the control of the Department of Agriculture as other watersheds are, water users will receive the same benefit and protection together with beneficial results there afforded.

Attention is also directed to the advantages to accrue, referred to in the letter of the Secretary of Agriculture, recommending the passage of this bill, from which it will be observed that the lands

constituting this watershed, although between fifty and sixty thousand acres, constitute but a part of a much larger watershed in connection therewith supplying the reservoir used by the project. Also, that the function of replenishing and protecting the reservoir watershed rests largely with the Forest Service, and that, in so far as the watershed purposes are concerned (and it is only for that use that the water users can have any interest therein), the interests of all, including the United States, will be best subserved by placing the entire watershed under the National Forest Service management.

The requested reports on this bill by Secretaries of Interior and Agriculture, respectively, follow:

DEPARTMENT OF THE INTERIOR,
Washington, September 7, 1922.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands, House of Representatives.

MY DEAR MR. SINNOTT: I have your letter of August 25, transmitting copy of H. R. 10861 and requesting report thereon.

The bill is as follows:

"A BILL To add certain lands to the Uinta National Forest, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there are hereby added to the Uinta National Forest, Utah, all those lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project, and said lands shall be administered by the Secretary of Agriculture under all laws, rules, and regulations applicable to national forests, except the act to provide for the entry of agricultural lands within forest reserves, approved June 11, 1906 (chapter 3074, Thirty-fourth Statutes, page 233).

"SEC. 2. That 10 per centum of all receipts obtained from the Uinta National Forest, Utah, shall at the end of each fiscal year be paid by the Secretary of Agriculture into the reclamation fund authorized to be established by the act of June 17, 1902 (Thirty-second Statutes, page 388), until there shall be reimbursed to said reclamation fund the amount heretofore paid for the lands described in section 1 hereof which was paid from the reclamation fund for the benefit of the Uintah Indians under the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and the Strawberry Valley project shall be credited therewith.

"Sec. 3. That the administration of these lands for the purposes described in section 1 hereof shall not prevent the Reclamation Service using any parts for the construction and maintenance of canals, dikes, dams, reservoirs, and other appurtenant irrigation works needed as parts of the Strawberry Valley project, including the right to take without cost all earth, stone, or other materials needed for such construction.

"Sec. 4. That that part of the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and all other laws inconsistent with the purposes of this act are hereby repealed."

The bill affects an area of about 50,000 acres, which was withdrawn for Strawberry Reservoir of the Strawberry Valley project constructed under the provisions of the reclamation act of June 17, 1902 (32 Stat., 388), and for the protection of the same against surface washing tending to decrease the storage capacity of the reservoir which would occur if unrestricted grazing were permitted upon this tract. Subsequently Congress passed the act of April 4, 1910 (36 Stat., 285), which contains the following:

"That the Secretary of the Interior is hereby authorized to pay from the reclamation fund for the benefit of the Uinta Indians the sum of $1.25 per acre for the lands in the former Uinta Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project. Such payment shall be made in five annual installments, and the moneys paid shall be subject to the same disposition as the proceeds of the sales of lands in the former Indian reservation. All such payments shall be included in the cost of construction of said Strawberry Valley project, to be reimbursed by the owners of lands irrigated therefrom, all receipts from said lands, as rentals or otherwise, being credited to the said owners. All right, title, and interest of the Indians in the said lands are hereby extinguished,

thereof shall pass to the owners of the lands whenever the management and operation of the irrigation shall so pass under the terms of the reclamation act."

Under this act the Secretary was authorized to pay for the benefit of the Uinta Indians the sum of $1.25 per acre for the lands so withdrawn. As a result, the sum of $71,085.65 was turned over to the fund for the Uinta Indians.

It will be observed that the portion of the act of 1910 above quoted provides that the payment made for these lands shall be included in the cost of construction of the Strawberry Valley project, to be reimbursed by the owners of the lands irrigated therefrom, all receipts from said lands as rentals or otherwise being credited to the said owners. Further that "all right, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act."

Under this provision of the law the cost of this land has been included in the cost of project, and the landowners on the project by reason of contracts both as irrigation organizations and in a large number of cases as individuals have agreed to repay the cost of these lands. Up to June 30, 1922, the water users on the project have paid $313,747.41 as reimbursement of construction charges. In addition, credits have been made to the construction cost amounting to $443,264.57 on account of the rentals of this particular tract and other tracts which have been rented for grazing purposes, also the returns from the sales of power and from other miscellaneous sources, all arising from the use of the property for which the water users have assumed the obligation to make payment. These additional receipts are credited to the cost of construction in pursuance of law or the adopted practice of the service for all projects. It appears, therefore, that there is a credit against the construction cost to June 30, 1922, of a total amounting to $757,011.98, which is 21.6 per cent of the cost of the project; the gross construction cost to June 30, 1922, being $3,503.48.

It may be stated roughly that about 2 per cent of this credit or about $15,000 is to be regarded as repayment on account of the cost of these lands, although there is no legal ground for any segregation of credits on this account.

The present bill proposes to add these lands to the Uintah National Forest to be administered by the Secretary of Agriculture under the laws, rules, and regulations applicable to national forests, and that 10 per cent of the receipts from the Uintah National Forest shall be paid into the reclamation fund until there shall be reimbursed to said fund the amount paid therefrom for the lands in question.

Section 4 of the bill repeals the act of April 4, 1910, and other laws inconsistent with the bill.

The effect of the passage of this bill would be to divest the landowners of such title and interest as they acquired under the said act of 1910 and also the benefits of the obligation for repayments assumed by them as well as the benefits of the payments already made. Furthermore, under such enactment they would be deprived of the rentals which can be secured from these grazing lands after they have obtained full title which will pass under the law by reason of complete payment for the project.

In the hearings before the Committee on the Public Lands upon this bill, held in April and May of this year, there was much discussion upon the point whether the act of April 4, 1910, would have the effect of passing title to this reservoir and the grazing lands or whether the operation of this act would be limited by the provisions of section 6 of the reclamation act of June 17, 1902 (32 Stat. 388), a reference to which is implied in the act of 1910. Said section 6 provides that when the payments required by the reclamation act are made for the major portion of the lands irrigated from the waters of any of the works provided for in the act, "then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior."

Neither in this section of the reclamation law nor in any other enactment regarding it is there a provision for the transfer of title to the project works and property, and the discussion revolved around the question whether the act of 1910 being subsequent to the act of 1902 modified the reclamation law to the extent of passing title to these lands instead of holding title as a sort of trust as implied by the reclamation law in general.

For the present discussion it is immaterial whether the law actually requires the title to pass, because the act of 1910, in connection with the reclamation law in general, must be construed as transferring to the landowners a valuable right for which they have assumed an obligation to make full payment and have up to date made payment substantially in accordance with the contractual obligations assumed and have in fact made payment of a considerable part toward the amount due on account of these lands.

It may be stated in conclusion that this department is in receipt from a Member of Congress of an earnest protest of the 2,000 water users under the Strawberry project against the enactment of the legislation.

In view of the facts and circumstances hereinabove set forth, I recommend against the enactment of H. R. 10861.

Respectfully,

ALBERT B. FALL, *Secretary.*

NOVEMBER 29, 1922.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands,
House of Representatives.

DEAR MR. SINNOTT: Further reference is made to your request of August 25 for a report from this department on House bill 10861, "To add certain lands to the Uintah National Forest, and for other purposes."

Briefly stated, the proposed legislation provides, first, for the addition of approximately 60,000 acres of land to the Uintah National Forest in the State of Utah and that it shall be subject to all laws relating to the national forests except the forest homestead act; second, for the annual payment of 10 per cent of the receipts from said national forest into the reclamation fund until that fund is reimbursed for payments made from it to the Uintah Indians for the land in question; the Indians were paid $1.25 per acre; third, for allowing the United States Reclamation Service to construct on the lands any canals, dikes, dams, reservoirs, or other irrigation works that may be needed as part of the Strawberry Valley irrigation project.

The proposed addition is surrounded on three sides and a part of the fourth by the Uinta National Forest. This will be shown more clearly by the attached map. The lands were withdrawn from disposal under the public land laws in order that they might be used in connection with the construction and maintenance of the irrigation project. Near the center of the tract is located the Strawberry Reservoir constructed by the United States Reclamation Service for the purpose of storing water to be used in the irrigation of lands lying some 25 miles to the westward.

The elevation of these lands is from 7,500 to 9,200 feet. Killing frosts occur throughout the summer months. Therefore if the lands were otherwise suited to the cultivation of agricultural crops this fact would tend to prevent their use for such purposes. The mountainous sections are covered with coniferous timber consisting of Alpine fir, Douglas fir, Engelmann spruce, and lodgepole pine. There is also a considerable growth of aspen. Reproduction over the whole area appears to be satisfactory. The open parts are covered with a good stand of grass and other forage plants, which results in the area being very valuable for grazing during the summer months.

The withdrawn area is only a part of the watershed which supplies the reservoir, the remainder now constituting part of the national forest. The function of protecting and reforesting the watershed now rests largely with the Forest Service. The inherent difference in that part outside of the national forest is not such as to necessitate a separate and different form of agreement and it would be in the interest of economy and efficiency to place the entire watershed under a single jurisdiction, prepared to conduct upon it the processes of reforestation and revegetation productive of maximum value for water storage.

Under a single administration these lands and the adjoining national forest lands could be so managed as to produce the best conditions of stream flow and contribute most to the successful operation of the Strawberry Valley irrigation project. It is important not only that the forest cover be adequately protected but also that the grazing use of these lands be regulated and managed in connection with a like use of the national forest lands. It is the function of the Forest Service to manage such lands as these, and by reason of its specially trained officers it is especially fitted to perform such a duty. The placing of this area under national forest administration would simplify the administration of the adjoining national forest lands and would add practically nothing to the cost of administration.

Since the reclamation fund was drawn on to pay the Indians $1.25 per acre for these lands, it would seem only proper to reimburse that fund for the amount paid, the amount of the reimbursement to be taken from the receipts of the Uinta National Forest.

The department feels that the addition of these lands to the Uinta National Forest would be in the interest of their best administration and would promote the highest use of the lands. Accordingly, it is recommended that the proposed legislation receive the favorable consideration of your committee.

Very sincerely yours,

HENRY C. WALLACE, *Secretary.*

VIEWS.

We, the undersigned, representing the views of the minority of the Public Lands Committee regarding H. R. 10861, respectfully submit that this bill should not pass, for the reasons set forth in the letter of September 7, 1922, from Albert B. Fall, Secretary of the Interior, to N. J. Sinnott, chairman Committee on the Public Lands, House of Representatives, which said letter is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, September 7, 1922.

Hon. N. J. SINNOTT,
Chairman Committee on the Public Lands, House of Representatives.

MY DEAR MR. SINNOTT: I have your letter of August 25, transmitting copy of H. R. 10861 and requesting report thereon.

The bill is as follows:

"A BILL To add certain lands to the Uinta National Forest, and for other purposes.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there are hereby added to the Uinta National Forest, Utah, all those lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project, and said lands shall be administered by the Secretary of Agriculture under all laws, rules, and regulations applicable to national forests, except the act to provide for the entry of agricultural lands within forest reserves, approved June 11, 1906 (chapter 3074, Thirty-fourth Statutes, page 233).

"SEC. 2. That 10 per centum of all receipts obtained from the Uinta National Forest, Utah, shall at the end of each fiscal year be paid by the Secretary of Agriculture into the reclamation fund authorized to be established by the act of June 17, 1902 (Thirty-second Statutes, page 388), until there shall be reimbursed to said reclamation fund the amount heretofore paid for the lands described in section 1 hereof which was paid from the reclamation fund for the benefit of the Uintah Indians under the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and the Strawberry Valley project shall be credited therewith.

"SEC. 3. That the administration of these lands for the purposes described in section 1 hereof shall not prevent the Reclamation Service using any parts for the construction and maintenance of canals, dikes, dams, reservoirs, and other appurtenant irrigation works needed as parts of the Strawberry Valley project, including the right to take without cost all earth, stone, or other materials needed for such construction.

"SEC. 4. That that part of the act of April 4, 1910 (Thirty-sixth Statutes, page 285), and all other laws inconsistent with the purposes of this act are hereby repealed."

The bill affects an area of about 50,000 acres which was withdrawn for Strawberry Reservoir of the Strawberry Valley project constructed under the provisions of the reclamation act of June 17, 1902 (32 Stat. 388), and for the protection of the same against surface washing tending to decrease the storage capacity of the reservoir which would occur if unrestricted grazing were permitted upon this tract. Subsequently Congress passed the act of April 4, 1910 (36 Stat. 285), which contains the following:

"That the Secretary of the Interior is hereby authorized to pay from the reclamation fund for the benefit of the Uintah Indians the sum of $1.25 per acre for the lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project. Such payment shall be made in five annual installments, and the moneys paid shall be subject to the same disposition as the proceeds of the sales of lands in the former Indian reservation. All such payments shall be included in the cost of construction of said Strawberry Valley project, to be reimbursed by the owners of lands irrigated therefrom, all receipts from said lands, as rentals or otherwise, being credited to the said owners. All right, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act."

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Under this act the Secretary was authorized to pay for the benefit of the Uintah Indians the sum of $1.25 per acre for the lands so withdrawn. As a result the sum of $71,085.65 was turned over to the fund for the Uintah Indians.

It will be observed that the portion of the act of 1910 above quoted provides that the payment made for these lands shall be included in the cost of construction of the Strawberry Valley project, to be reimbursed by the owners of the lands irrigated therefrom, all receipts from said lands as rentals or otherwise being credited to the said owners. Further, that "all right, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act."

Under this provision of the law the cost of this land has been included in the cost of the project and the landowners on the project by reason of contracts both as irrigation organizations and in a large number of cases as individuals have agreed to repay the cost of these lands. Up to June 30, 1922, the water users on the project have paid $313,747.41 as reimbursement of construction charges. In addition credits have been made to the construction cost amounting to $443,264.57 on account of the rentals of this particular tract and other tracts which have been rented for grazing purposes, also the returns from the sales of power and from other miscellaneous sources, all arising from the use of the property for which the water users have assumed the obligation to make payment. These additional receipts are credited to the cost of construction in pursuance of law or the adopted practice of the service for all projects. It appears, therefore, that there is a credit against the construction cost to June 30, 1922, of a total amounting to $757,011.98, which is 21.6 per cent of the cost of the project the gross construction cost to June 30, 1922, being $3,503,349.48.

It may be stated roughly that about 2 per cent of this credit, or about $15,000, is to be regarded as repayment on account of the cost of these lands, although there is no legal ground for any segregation of credits on this account.

The present bill proposes to add these lands to the Uintah National Forest to be administered by the Secretary of Agriculture under the laws, rules, and regulations applicable to national forests, and that 10 per cent of the receipts from the Uintah National Forest shall be paid into the reclamation fund until there shall be reimbursed to said fund the amount paid therefrom for the lands in question.

Section 4 of the bill repeals the act of April 4, 1910, and other laws inconsistent with the bill.

The effect of the passage of this bill would be to divest the landowners of such title and interest as they acquired under the said act of 1910 and also the benefits of the obligation for repayments assumed by them as well as the benefits of the payments already made. Furthermore, under such enactment they would be deprived of the rentals which can be secured from these grazing lands after they have obtained full title which will pass under the law by reason of complete payment for the project.

In the hearings before the Committee on the Public Lands upon this bill held in April and May of this year, there was much discussion upon the point whether the act of April 4, 1910, would have the effect of passing title to this reservoir and the grazing lands or whether the operation of this act would be limited by the provisions of section 6 of the reclamation act of June 17, 1902 (32 Stat. 388), a reference to which is implied in the act of 1910. Said section 6 provides that when the payments required by the reclamation act are made for the major portion of the lands irrigated from the waters of any of the works provided for in the act, "then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior."

Neither in this section of the reclamation law nor in any other enactment regarding it is there a provision for the transfer of title to the project works and property and the discussion revolved around the question whether the act of 1910 being subsequent to the act of 1902 modified the reclamation law to the extent of passing title to these lands instead of holding title as a sort of trust, as implied by the reclamation law in general.

For the present discussion it is immaterial whether the law actually requires the title to pass, because the act of 1910, in connection with the reclamation law in general, must be construed as transferring to the landowners a valuable right for which they have assumed an obligation to make full payment and have up to date made payment substantially in accordance with the contractual obligations assumed and have in fact made payment of a considerable part toward the amount due on account of these lands.

It may be stated in conclusion that this department is in receipt from a Member of Congress of an earnest protest of the 2,000 water users under the Strawberry project against the enactment of the legislation.

In view of the facts and circumstances herein above set forth, I recommend against the enactment of H. R. 10861.

Respectfully,

ALBERT B. FALL, *Secretary.*

In further explanation of our views we submit that the act of April 4, 1910 (36 Stat. 285), which follows, is in effect a statutory contract of sale to the Strawberry Valley project:

That the Secretary of the Interior is hereby authorized to pay from the reclamation fund for the benefit of the Uintah Indians the sum of $1.25 per acre for the lands in the former Uintah Indian Reservation, in the State of Utah, which were set apart by the President for reservoir and other purposes under the provisions of the act approved March 3, 1905, chapter 1479, and which were by the Secretary of the Interior withdrawn for irrigation works under the provisions of the reclamation act of June 17, 1902, in connection with the reservoir for the Strawberry Valley project. Such payment shall be made in five annual installments, and the moneys paid shall be subject to the same disposition as the proceeds of the sales of lands in the former Indian reservation. All such payments shall be included in the cost of construction of said Strawberry Valley project, to be reimbursed by the owners of lands irrigated therefrom, all receipts from said lands as rentals or otherwise being credited to the said owners. All rights, title, and interest of the Indians in the said lands are hereby extinguished, and the title, management, and control thereof shall pass to the owners of the lands irrigated from said project whenever the management and operation of the irrigation works shall so pass under the terms of the reclamation act. (36 Stat. 285.)

It is apparent that the language in said act of April 4, 1910, fixing the time when the title, management, and control shall pass, to wit: "Whenever the management and operation of the irrigation works shall so pass," was taken bodily by the author of the act of April 4, 1910, from the first part, preceding the proviso of section 6 of the reclamation act approved June 17, 1902 (32 Stat. 389), which said section 6 is as follows:

That when the payments required by this act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form or organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress. (32 Stat. 389.)

The first part of said section 6 provides that when payments are made for the major portions of the lands irrigated "then the management and operation of such irrigation works shall pass."

The act of April 4, 1910, using practically the identical language just quoted, provides that the title, management, and control of the lands in question shall pass "whenever the management and operation of the irrigation works shall so pass."

It is thus very clear to us that the passing of title, management, and control provided for in the act of April 4, 1910, is predicated upon the passing of "the management and operation of such irrigation works," provided for in said section 6 of the reclamation act of 1902, namely, when the payments required by the reclamation law are made for the major portion of the lands irrigated. When these payments are so made we feel that the Strawberry Valley project, which has in part paid the consideration therefor, is entitled to have the title, management, and control of the lands covered by the act of April 4, 1910, and that the Government should respect and keep its contract.

N. J. SINNOTT,
O. B. BURTNESS,
ADDISON T. SMITH,
W. J. DRIVER,
ROSS A. COLLINS.

VIEWS OF MR. RAKER.

I have carefully read the majority report and the minority views on H. R. 10861.

(1) The hearings had before the committee, which are printed, have had my very careful consideration. Oral argument was heard by the committee from those interested for the bill and those against it.

The proponents of the legislation contend that the Strawberry Valley project has no right, title, or interest in the lands involved. That the lands should be turned over to the Department of Agriculture under the jurisdiction of the Forest Service—in other words, made a part of the Uinta National Forest, in the State of Utah, and that any proceeds received from such lands should go to the reclamation fund as described in the bill.

(2) While on the other hand the opponent of the bill, representing the Strawberry Valley project and the water users thereunder, contend that by virtue of the grant of Congress under the act of April 4, 1910 (36 Stat. 285) they now have a right and interest in and to said lands which will ripen into an absolute title upon the happening of the conditions specified in said act. That when that event shall occur their title will be absolute and complete. That the project is entitled to the proceeds and use of said lands pending the happening of such event. This event is fully explained in the minority views.

The Department of Agriculture and the Government, through its legally constituted authority, Congress and the Public Lands Committee, now seek to have said lands declared to be lands of the United States and free from any claim of the Strawberry Valley project under the act of April 4, 1910. The Interior Department and the Strawberry Valley project, and the water users thereof, say their interest has been determined by Congress by virtue of the provisions of said act of April 4, 1910, and it would be bad faith on the part of the Government to attempt to deprive them of the rights granted by said act.

So that we have a case which eventually will have to be determined by the courts as to the validity and effect of the act of April 4, 1910. This committee has not the machinery to determine that question. It should not attempt to prejudice the rights of either party to the controversy by legislation at this time. Let these parties have their day in court. The questions involved should not be left open for future controversy. It is one for the courts to settle.

I therefore propose the following House joint resolution for the purpose of a proper and final and orderly mode and method of settling this much controverted and contested proposed legislation, as a substitute for the pending bill:

JOINT RESOLUTION Authorizing the Strawberry Valley project and the water users thereunder to bring suit against the United States to determine the right, title, and interest to certain lands in the State of Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That consent is hereby given that a suit or suits may be instituted against the United States by or in the behalf of the Strawberry Valley project and

... said project in the District Court of the United States in and for the State of Utah to determine the right, title, and interest of the said Strawberry Valley project and the water users thereunder to certain lands in the State of Utah, alleged to have been granted by the United States to said Strawberry Valley project by act of Congress entitled "An act making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1911," approved April 4, 1910 (Thirty-sixth Statutes, page 269), and in any such suit the right, title, and interest of such project and the water users thereunder and of the United States may be fully tested and determined if the Secretary of the Interior and the Secretary of Agriculture are made parties to such suit, and the right is hereby granted that any party to such suit aggrieved may appeal to the Supreme Court of the United States.

For the foregoing reasons I can not concur in the majority report of the committee.

JOHN E. RAKER.

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67TH CONGRESS, 4th Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1639.

CLAIMS FOR DAMAGES TO AND LOSS OF PRIVATE PROPERTY INCIDENT TO THE TRAINING, PRACTICE, OPERATION, OR MAINTENANCE OF THE ARMY.

FEBRUARY 17, 1923.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SNELL, from the Committee on War Claims, submitted the following

REPORT.

[To accompany S. 4313.]

The Committee on War Claims, to whom was referred the bill (S. 4313) entitled "Claims for damages to and loss of private property incident to the training, practice, operation, or maintenance of the Army," having considered the same, report thereon with a recommendation that it do pass.

This bill provides for the payment of numerous claims in amounts in excess of $500 which the General Accounting Office is unable to act upon under a provision of the Army appropriation act for the fiscal year of 1923, limiting the amount of claims of this character which can be settled by the General Accounting Office to those not exceeding $500, as set forth in Senate Report No. 1036, Sixty-seventh Congress, fourth session, appended hereto and made a part of this report.

[Senate Report No. 1036, Sixty-seventh Congress, fourth session.]

The Committee on Claims, to whom was referred the bill (S. 4313) for the payment of claims for damages to and loss of private property incident to the training, practice, operation, or maintenance of the Army, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The following communication from the President of the United States is appended hereto and made a part of this report.